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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/613,243	07/03/2003	Samuel C. McCaslin	SCM 02388	4749

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EXAMINER

GROSSO, HARRY A

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 04/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary**Application No.**

10/613,243

Applicant(s)

MCCASLIN, SAMUEL C.

Examiner

Harry A. Grosso

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 19-21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 1-18 and 22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 November 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-18, 22, drawn to an apparatus, classified in class 220, subclass 737.
 - II. Claims 19-21, drawn to a fluid container, classified in class 220, subclass 636.
2. Inventions of Group I and Group II are related as subcombinations disclosed as usable together in a single combination. The subcombinations are distinct from each other if they are shown to be separately usable. In the instant case, invention of Group I has separate utility such as being used without the fluid container in Group II or with no fluid container at all. See MPEP § 806.05(d).
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.
4. During a telephone conversation with Mr. Amos Bartoli on April 6, 2005 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-18 and 22. Affirmation of this election must be made by applicant in replying to this Office action. Claims 19-21 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Drawings

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the non-skid surface

on the first and second sides of the first member (claims 4, 5), the adjustable diameter of the ring in the second member (claim 9), the means to prevent slipping of the ring in the second member (claim 10) must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

6. The drawings are objected to under 37 CFR 1.84(h)(5) because Figure 6 show(s) modified forms of construction in the same figure.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

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The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claims 9-12 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter that was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. Claim 9 recites an adjustable diameter but this is not shown and the specification does not describe how this is accomplished. Claim 10 recites a means to prevent slipping but this is not shown and the specification does not disclose any means for accomplishing this. Claims 11 and 12 are dependent on claim 10.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1, 2, 3, 6 and 7 are rejected under 35 U.S.C. 102(b) as being anticipated by Overkamp (6,305,532). Overkamp discloses a lap tray having a generally rectangular first member (10, Figure 1, column 4, lines 36-38) with a second member for holding a fluid container that includes a cavity located near an outer edge of the first member (40, Figure 1, column 4, lines 46-48) and the second member includes a ring like member that can be disposed therein (80, Figures 3-4, column 4, lines 63-65).

11. Claims 1 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Torkelson (5,607,077). Torkelson discloses an apparatus with a first member (10, Figure 1, column 4, lines 19-21) with a second member for holding a fluid container (34, Figure 1, column 4, lines 58-60) and the second member has a plurality of gear like members secured to an inner surface (64, Figure 5a, column 6, lines 13-18).

12. Claim 22 is rejected under 35 U.S.C. 102(b) as being anticipated by Ercolani (5,119,967). Ercolani discloses an apparatus having a first member (10, Figure 1, column 2, lines 49-51), a second member for holding a fluid container (20, column 3, lines 3-5) and a third member for holding a food container (42).

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Overkamp.

15. Regarding claim 13, Overkamp discloses the apparatus of claim 7 but does not disclose any dimensions for the height of the ring. Applicant requires the height of the ring to be 1/8"- 1/2" but does not disclose that these dimensions are for any particular purpose or solve any stated problem. The apparatus of Overkamp would be inherently capable of performing in the same manner as the apparatus of claim 13. It would have been obvious to one of ordinary skill in the art at the time the invention was made to

have incorporated the use of a height of 1/8" - 1/2" in the apparatus disclosed by Overkamp to provide it with adequate height to securely grasp the bottom of a container. In *Gardner v. TEC Systems, Inc.*, 725 F.2d 1338, 220 USPQ 777 (fed. Cir. 1984), *cert. denied*, 469 U.S. 830, 225 USPQ 232 (1984), the Federal Circuit held that, where the only difference between the prior art and the claims was a recitation of the relative dimensions of a claimed device and a device having claimed relative dimensions would not perform differently than the prior art device, the claimed device was not patentably distinct from the prior art device.

16. Regarding claim 14, applicant requires a thickness for the ring member of 1/8" – 1/2" that relates to the preferred inner and outer diameters stated in the specification. Overkamp discloses the apparatus of claim 7 but does not disclose a thickness for the ring, however, Overkamp would be inherently capable of performing in the same manner as the apparatus of claim 14. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a width of 1/8" - 1/2" in the apparatus disclosed by Overkamp to provide it with adequate size to securely grasp the bottom of a typical container. The court holding as discussed in paragraph 17 applies.

17. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Overkamp in view of French (2,777,626). Overkamp discloses the apparatus of claim 1 but does not teach the use of non-skid material on a first or second side of the first member. French discloses a tray apparatus with a non-skid material on the top and bottom surfaces (25, 125, Figures 1 and 4, column 1, lines 46-50, lines 68-70, column 2,

lines 51-55) to provide anti-skid properties for the tray and its contents. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a non-skid material on the top and bottom surfaces of the apparatus as disclosed by French in the apparatus disclosed by Overkamp to provide anti-skid properties for the apparatus and its contents.

18. Claim 9 is rejected under 35 U.S.C. 103(a) as being unpatentable over Overkamp in view of Burrows et al (5,170,980). Overkamp discloses the apparatus of claim 7 but does not teach that the ring member is adjustable. Burrows et al discloses a fluid container ring that is adjustable for different size containers (Figures 7 and 8, column 5, lines 3-11). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a fluid container ring that is adjustable as disclosed by Burrows et al in the apparatus disclosed by Overkamp to allow its use with different size containers.

19. Claims 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Overkamp in view of Lin (2002/0134903, September 26, 2002). Overkamp discloses the apparatus of claim 7 but does not teach the use of a means to prevent slipping on the ring. Lin discloses the use of a resilient pad on the bottom of a fluid container holder to form a non-slip substructure to increase stability and prevent slipping (50, Figures 13, 14 and paragraph 0037). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of a resilient pad on the bottom of a fluid container ring to form a non-slip substructure as disclosed by Lin in the apparatus disclosed by Overkamp to increase stability and prevent slipping.

20. Claims 17 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Overkamp in view of Bryant (6,371,322). Overkamp discloses the apparatus of claim 1 but does not teach a material for it. Bryant discloses a tray apparatus (10, Figure 1) and that the apparatus may be made from polyvinyl chloride, PVC, (column 3 lines 59-62). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of polyvinyl chloride as disclosed by Bryant in the apparatus disclosed by Overkamp to use a rigid, durable material that is commonly used and whose forming is known in the art.

21. Claims 15 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Torkelson in view of Wilde et al (4,418,828) and Ma (6,766,916). Torkelson discloses the apparatus of claim 8 but does not teach that the gear like members are disposed at a specified angle. Wilder et al discloses a locking ring that is positioned around a container neck and has gear like members (34, 42, Figure 1 and 3, and column 7, lines 54-58). The gear like members are disposed at an angle of 20-60 degrees with respect to the vertical (column 7 line 67 to column 8 line 5 and column 8 lines 12-15), which would be 30 -70 degrees with respect to the horizontal, which allows application of a closure with the locking ring to a container without interference from the ring. Ma discloses first and second gear like members on mating surfaces of the locking ring and the container that have substantially identical pitch (Figures 13-16 and column 6, lines 17-50). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated the use of first and second gear like members disposed at an angle of 20-60 degrees with respect to the vertical, which

is 30 -70 degrees with respect to the horizontal, as disclosed by Wilder et al and Ma in the apparatus disclosed by Torkelson to allow application of the locking ring to a container without interference from the ring.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry A. Grosso whose telephone number is 571-272-4539. The examiner can normally be reached on Monday through Thursday and alternate Fridays from 7am to 4 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee Young can be reached on 571-272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lee Young
Supervisory Patent Examiner
Art Unit 3727

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